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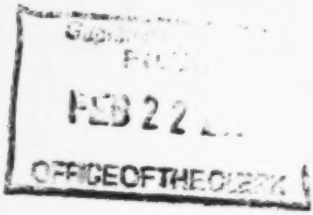

No. 04-867

IN THE
SUPREME COURT OF THE UNITED STATES -

Isidoro Rodriguez, Esq.,

Petitioner,

v.

Guy Vander Jagt, Esq., Harrison Pledger, Esq., Law Offices of Pledger & Feord, LP; HFP INC.; IOTA Partners; Jack Harbeston; Edris E. Harbeston; Jerome Barron; and Murdock & Co.,

Respondents.

On Petition For Writ of Certiorari
To the Supreme Court of Virginia and The Fairfax County Circuit Court

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SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

Isidoro Rodriguez, Esq.
Counsel for Petitioner
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SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioner Isidoro Rodriguez, Esq. ("Rodriguez"), files this his Supplemental Brief containing the recently entered February 15, 2005 "Entry of Default Order" and for a trial by jury on the issue of damages against Co-Defendant Danilo Devis Pereira ("Devis"), issued by the Hon. Chief Judge Michael P. McWeeny, Fairfax County Circuit Court, No. Law 215327 (attached at Appendix p. 1).

Devis is not a party in the instant Petition, but is the remaining Defendant in the on going proceeding in the Fairfax County Circuit Court.

In accordance with VA Rule 3:5, and :17, and the Inter-American Convention on Letters of Rogatory, S. Treaty Doc. 98-27, 98th Cong., 2d Sess., (1984), pp. III-V, XI. ("Treaty"), Devis was properly served in the Republic of Colombia the First Amended Motion for Judgment on June 9, 2004, for him to answer for his participation with Respondents Vander Jagt *et al.,* in their alleged Business Conspiracy in violation of VA Code § 18.2-500 to deprive Rodriguez of his property in his perfected VA Code § 54.1-3932 Attorney's Lien.

Although properly served and given notice in accordance with the Treaty and the laws of Virginia, Devis has failure to plead, answer or otherwise defend as required by law, permitting the entry of the order of default.

The bases of the claim against Devis are the fact that to litigate SSA Entities' claims in Colombia, Rodriguez formed a 50/50 joint venture partnership in 1988 with Devis as his Agent and Colombian Attorney. As a condition precedent to their agency and partnership, Devis agreed to be subject to the control and direction of Rodriguez as the principal, and to comply with Virginia State Bar standards (*See* Appendix p. 18, Virginia State Bar Legal Ethics Opinion #1325, February 27, 2990).

In 1998 after Rodriguez as Legal Representative of Sea Search Armada authorized the submitted on behalf of Respondent SSA Entities *et al.,* the proposed settlement counter offer to the Republic of Colombia, Devis in breach of his fiduciary duty to Rodriguez as both agent and joint venture partner did actively did conspire with Respondents Vander Jagt, Pledger, and SSA Entities *et al.*, to fraudulently deprive Rodriguez of his Virginia statutory property rights.

Now the Entry of Default will permit discovery on the issue of damages resulting from the acts of Devis' in violation of his fiduciary duty to Rodriguez, in furtherance of the business conspiracy, including assisting in the fraudulent dissolution and transfer of SSA Entities property rights in all the sunken *Treasure Trove*, and mailing into and making in Virginia false and malicious statements in furtherance of a Virginia Bar Complaint filed against Rodriguez by SSA Entities *et al.*

In *Greenspan v. Oberoff*, 232 Va. 388, 400, 351 S.E.2d 28, 36 (1986), the Supreme Court of Virginia described the essence of fiduciary duty as where one person sustains a fiduciary relationship to another, he or she cannot acquire an interest in the subject matter of the relationship adverse to such other party. *See also Flippo v. CSC Associates*, 262 Va. 48, 547 S.E.2d 216 (2001).

Neither the unpublished orders of the Virginia Supreme Court and Fairfax County Circuit Court involved in the instant Petition, nor the unpublished order of the Federal Court in *Rodriguez v. HFP, Inc., et al.* U.S. Dist. Ct. E.D. Va. 02CV1523 (Lee, J), bar litigation of the claim against Devis based on either *res judicata* or collateral estoppel, since they purposefully ignored Rodriguez rights in his perfected charging Virginia Attorney's Lien, and his right to protect his statutory property right from the common law and a malicious business conspiracy in violation of VA Code § 18.2-499 and § 500.

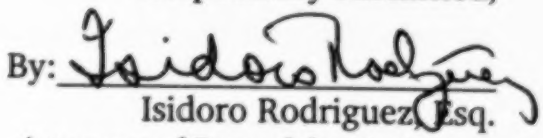
CONCLUSION

Relevant to consideration of the instant pending Petition for Certiorari schedule for conference on February 25, 2005, the Hon. Chief Judge Michael P. McWeeny, Fairfax County Circuit Court, order granting discovery and a jury trial on the issue of damages. Thus given the above facts which were accepted as true by the Virginia Court in granting the demurrer, it is respectfully requested that consistent with Rodriguez Virginia statutory rights to

fair impartial treatment as other Virginia Attorneys responsible to the Virginia State Bar for their professional conduct--irrespective of providing pro hoc vice service,--the Supreme Court must remand the action for full consideration in a trial by jury by the Fairfax County Circuit Court, pursuant to the requirements of the Privilege and Immunity Clause, due process pursuant to the V Amendment, and equal protection pursuant to the XIV Amendment, under the United States Constitution.

For the above reasons the petition should be granted.

Respectfully submitted,

By: 

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APPENDIX

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ, ESQ,

Plaintiff,

v. At Law No. 215327

GUY VANDER JAGT, ESQ., *et. al.*,

Defendants.

ENTRY OF DEFAULT ORDER

Upon consideration of Plaintiff Isidoro Rodriguez's Application for Entry of Default, along with the supporting Affidavit with Attachments, both being in compliance with VA Rule 3:5, and :17, and the Treaty, it is hereby determined that a copy of the Summons, together with a copy of the First Motion for

Judgment, the Form 272 and 272A, and Request for International Judicial Assistance pursuant to the additional protocol to the Inter-American Convention, signed Hon. Judge Robert W. Wooldridge, Jr., and with the seal of the Office of the Clerk, Fairfax County Circuit Court., were served upon the Defendant Danilo Devis Pereira, in accordance with the Treaty, on June 9, 2004.

Pursuant to VA Rule 3:5, and :17, and the Treaty,, service of process was deemed complete on Defendant Danilo Devis Pereira on June 9, 2004. The Defendant Danilo Devis Pereira has failed to plead, defend or otherwise respond to this action.

THEREFORE, default is hereby entered against Defendant Danilo Devis Pereira, this the 15th day of February, 2005, and it is ordered that Plaintiff is permitted to conduct discovery on the issue of

damages, and present said evidence to a jury, on a date to be later determined.

/s/
Michael P. McWeeny
Chief Circuit Judge